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P.O. BOX 1450
ALEXANDRIA, VA 22312-1450
www.uspto.gov

FISH & NEAVE LLP
1251 AVENUE OF THE AMERICAS
50TH FLOOR
NEW YORK, NY 10020-1105

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DEC 14 2004

In re Patent No. 6,628,526 :
Issued: September 30, 2003 :
Application No. 09/614,374 : DECISION REGARDING PTA
Filed: July 21, 2000 :
Atty. Dkt. No.: TY-001 :

OFFICE OF PETITIONS

This decision is in response to the "PETITION UNDER 35 U.S.C. § 154(b)(3)B(ii) and 37 C.F.R. § 1.182," filed October 29, 2003. This request for reconsideration of patent term adjustment will be considered under 37 CFR 1.705(d)¹.

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

Patentee requests that the Determination of Patent Term Adjustment be corrected from the 0 day determination indicated on the Letters Patent to a determination of 43 days.

The Office initially determined a PTA of 44 days². The adjustment of 44 days was reduced an additional 112 days for applicants' failure to engage in reasonable efforts to conclude prosecution in accordance with 37 CFR 1.704(c)(10) for submission of formal drawings on June 11, 2003. The delay began June 11, 2003, the date of receipt of the drawings, and ended September 30, 2003, the date the patent issued.

Applicants, however, argue that the reduction for submission of the drawings is 1 day. Applicants' argue that the period of reduction began June 11, 2003, the date the drawings were received, and ended June 11, 2003, the date the Patent Application Information Retrieval ("PAIR") system indicated the drawings were "finished." Applicants argue that the designation of "finished" in the PAIR system is a "notice" within the meaning of 37 CFR 1.704(c)(10)(i).

Applicants' arguments have been considered and found unconvincing. The period of adjustment of the term of a patent under 37 CFR 1.703(a)

¹Prior to May 24, 2004, the provisions of 37 C.F.R. § 1.705(d) were available after the issuance of a patent but were limited to situations wherein the patent issues on a date other than the projected date of issue and this change necessitates a revision in the patent term indicated on the Notice of Allowance. The Office, however, construed this provision to include grounds for contesting any PALM entry affecting PTA which occurs after the mailing of the Notice of Allowance until the issuance of the patent regardless of whether the patent issues on a date other than the projected date of issue.

² An adjustment of 138 days for Office delays was reduced 94 days at the time of mailing of Notice of Allowance.

through (e) shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application. See, 37 C.F.R. § 1.704(a). Submission of a paper, including formal drawings, after the Notice of Allowance has been mailed constitutes a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application. See, 37 C.F.R. § 1.704(c)(10) and 1247 Off. Gaz. Pat. Off. 111 (June 26, 2001). In accordance with 37 CFR 1.704(c)(10), "[s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of: (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) Four months."

Thus, in accordance with 37 CFR 1.704(c)(10)(i), the period of adjustment is reduced 112 days for submission of the formal drawings. The period of adjustment began June 11, 2003, the date the drawings were filed, and ended September 30, 2003, the date patent issued. The mailing of the letters patent on June 11, 2003 is "notice" within the meaning of 37 CFR 1.704(c)(10)(i).

Applicant has submitted \$130.00 in connection with this matter. The fee required for an application for patent term adjustment under 37 CFR 1.705(d) is \$200.00. Thus, \$70.00 has been charged to Deposit Account No. 06-1075 as authorized in the instant application.

Applicant is given one (1) month to request reconsideration of this decision. The period of time for reconsideration is not extendible under 37 CFR 1.136(a) or 37 CFR 1.136(b).

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3202.

Karin A. Ferriter
for
Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy